

Seven Proposed Commercial Receivership Amendments

Staff Note: These amendments are related to S.L. 2020-75, which added a new Article 38A on commercial receiverships to Chapter 1 of the General Statutes. Starred changes have been requested by the Bankruptcy Section of the NC Bar Association. Arrowed changes are technical corrections and clean-up amendments suggested by GSC staff. In the opinion of GSC staff, all changes are technical, except for the addition of “and demand” in G.S. 1-502.30(a)(2) by Amendment #4.


Amendment #1:

Section #. G.S. 1-502 reads as rewritten:

"§ 1-502. In what cases appointed.

A receiver may be appointed in any of the following cases:

- (1) Before judgment, on the application of either party, when the party establishes an apparent right to property that is the subject of the action and in the possession of an adverse party, and the property or its rents and profits are in danger of being lost or materially injured or impaired; a receiver, however, shall not be appointed in cases where judgment upon failure to answer may be had on application to the court.
- (2) After judgment, to carry the judgment into effect.
- (3) After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or when an execution has been returned unsatisfied, and the judgment debtor refuses to apply the property in satisfaction of the judgment.
- (4) In cases provided in G.S. 1-507.1 and in similar cases, regarding property within this State of foreign corporations.
- (5) In cases where restitution is sought for violations of G.S. 75-1.1.
- (6) In cases involving partition of real property, pursuant to G.S. 46A-28.

 ~~The provisions of Part 2 of Article 38 of Chapter 1 of the General Statutes apply to the appointment of a receiver of a corporation under this section."~~

Explanation:


This amendment deletes an obsolete reference. Section 2(b) of S.L. 2020-75 repealed Part 2 of Article 38 of Chapter 1 of the General Statutes, effective January 1, 2021.

Amendment #2:


SECTION #. G.S. 1-507.20 reads as rewritten:

"§ 1-507.20. Short title; definitions.

(a) Short Title. – This Article may be cited as the North Carolina Commercial Receivership Act.

 (b) Definitions. – The following definitions apply throughout this ~~Article unless the context requires otherwise:~~ Article:

- (1) Affiliate. – As defined in G.S. 39-23.1(1).

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- (2) Business trust. – As defined in G.S. 39-44.
 - (3) Collateral. – The property subject to a lien.
 - (4) Consumer Debt. – Debt incurred by an individual primarily for a personal, family, or household purpose.
 - (5) Court. – The superior or district court in which the receivership is pending, except that in the case of a receiver appointed to partition real property pursuant to ~~G.S. 46-3.1~~, G.S. 46A-28, the term shall mean the clerk of superior court that has jurisdiction over the receiver and the receivership.
 - (6) Debtor. – The person over whose property the receiver is appointed.
 - (7) Entity. – A person other than an individual.
 - (8) Executory contract. – A contract that is part of the receivership property, including a lease, where the obligations of both the debtor and the other party to the contract are unperformed to the extent that the failure of either party to complete performance of its obligations would constitute a material breach of the contract, thereby excusing the other party's performance of its obligations under the contract.
 - (9) Foreign jurisdiction. – Any state or federal jurisdiction other than that of this State.
 - (10) Foreign receiver. – A receiver appointed in any foreign jurisdiction.
 - (11) General receiver. – The receiver appointed in a general receivership.
 - (12) General receivership. – A receivership over all or substantially all of the nonexempt property of a debtor for the purpose of liquidation and distribution to creditors and other parties in interest, including a receivership under the provisions of Chapters 55, 55A, 55B, 57D, or 59 of the General Statutes.
 - (13) Good faith. – Honesty in fact and the observance of reasonable commercial standards of fair dealing.
 - (14) Individual. – A natural person.
 - (15) Individual business debtor. – An individual owing consumer debt, on the date of the filing of the pleading seeking the appointment of a receiver under this Article for such individual, in an amount that is less than fifty percent (50%) of the individual's total debt.
 - (16) Insider. – As to any person, includes the following:
 - a. If the person is an individual, then any of the following:
 - 1. A relative of the person or of a general partner of the person.
 - 2. A partnership in which the person is a general partner.
 - 3. A general partner in the partnership in which the person is a general partner.
 - 4. A corporation or limited liability company of which the person is a director, officer, manager, managing member, or other person in control.
 - b. If the person is a corporation or limited liability company, then any of the following:
 - 1. An officer, director, manager, or managing member of the person.
 - 2. A person in control of the person.
 - 3. A partnership in which the person is a general partner.

- 4. A general partner in a partnership in which the person is a general partner.
 - 5. A relative of a general partner, officer, director, manager, managing member, or person in control of the person.
 - c. If the person is a partnership, then any of the following:
 - 1. A general partner in the person.
 - 2. A relative of a general partner in, general partner of, or person in control of the person.
 - 3. Another partnership in which the person is a general partner.
 - 4. A general partner in a partnership in which the debtor is a general partner.
 - 5. A person in control of the person.
 - d. An affiliate, or insider of an affiliate, as if ~~such~~the affiliate were the person.
 - e. A managing agent of the person.
- (17) Insolvent. – With respect to a debtor, the sum of the debtor's debts is greater than all of the debtor's property, at a fair valuation, exclusive of (i) property transferred, concealed, or removed with intent to hinder, delay, or defraud the debtor's creditors, or that has been transferred in a manner making transfer voidable under Article 3A of Chapter 39 of the General Statutes, and (ii) property that may be exempt from receivership property under Chapter 1C of the General Statutes.
- (18) Lien. – A charge against or interest in property to secure payment of a debt or the performance of an obligation.
- (19) Limited receiver. – The receiver appointed in a limited receivership.
- (20) Limited receivership. – A receivership other than a general receivership, including a receivership instituted as a supplemental proceeding to collect on a judgment pursuant to G.S. 1-363.
- (21) Party. – A person who is a party within the meaning of the North Carolina Rules of Civil Procedure in the action in which a receiver is appointed.
- (22) Party in interest. – Includes the debtor, an insider, any equity security holder in the debtor, any person with an ownership interest in or lien on receivership property, and, in a general receivership, any creditor of the debtor.
- (23) Person. – Includes both individuals and entities such as corporations, limited liability companies, partnerships, and other entities recognized under the laws of this State.
- (24) Property. – All of the debtor's right, title, and interest, both legal and equitable, in real and personal property, regardless of the manner by which any of ~~the same were or are~~it was or is acquired. The term includes any proceeds, products, offspring, rents, or profits of or from the property. The term does not include (i) any power that the debtor may exercise solely for the benefit of another person, (ii) a power of withdrawal exercisable by the debtor over property of a trust for which the debtor is not the settlor, to the extent that the power is not subject to the claims of the debtor's creditors pursuant to G.S. 36C-5-505(b), or (iii) if the debtor is an individual, any real property owned jointly by the debtor and the debtor's spouse that is held by them as a

tenancy by the entireties, unless the debtor's spouse is also a debtor in the receivership and there is a joint debt owed to one or more creditors.

- (25) Receiver. – A person appointed by the court as the court's agent, and subject to the court's direction, to take possession of, manage, control, and, if authorized by this Article or order of the court, dispose of receivership property.
- (26) Receivership. – The case in which the receiver is appointed, and, as the context requires, the proceeding in which the receiver takes possession of, manages, or disposes of the debtor's property.
- (27) Receivership property. – In the case of a general receivership, all or substantially all of the nonexempt property of the debtor, or in the case of a limited receivership, the property of the debtor identified in the order appointing the receiver, or in any subsequent order, and, in each case, except for the debtor's property that is wholly exempt from the enforcement of claims of creditors pursuant to applicable law, including without limitation, pursuant to G.S. 1-362, 1C-1601(a), 1C-1602, 25C-4, 30-15, 30-17, 131E-91(d)(5), and 135-9. ~~Notwithstanding the foregoing, receivership~~ Receivership property in a general receivership of an individual business ~~debtor shall~~ debtor, however, does not include (i) the principal residence of the individual business debtor if the value of the principal residence is less than the combined amount of all liens and all rights of redemption and allowed claims of exemption in the principal residence and (ii) any consumer good if the value of ~~such the~~ such the consumer good is less than the combined amount of all liens and all rights of redemption and allowed claims of exemption in ~~such the~~ such the consumer good.
- (28) Record. – When used as a noun, means information that is inscribed on a tangible medium or that is stored on an electronic or other medium and is retrievable in perceivable form.
- (29) Secured obligation. – An obligation the payment or performance of which is secured by a security interest or a lien.
- (30) Secured party. – A person entitled to enforce a secured obligation. The term includes a mortgagee under a mortgage and a beneficiary under a deed of trust.
- (31) Security agreement. – An agreement that creates or provides for a lien. The term includes a mortgage and a deed of trust.
- (32) Sign. – With present intent to authenticate or adopt a record, (i) to execute or adopt a tangible symbol or (ii) to attach to or logically associate with the record an electronic sound, symbol, or process.
- (33) State agent and State agency. – Any office, department, division, bureau, board, commission, or other agency of this State or of any subdivision thereof, or any individual acting in an official capacity on behalf of any State agent or State agency.
- (34) Time of appointment. – The date and time specified in the order of appointment of a receiver or, if the date and time are not specified in the order of appointment, the date and time that the court ruled on the application for the appointment of a receiver. The term does not mean any subsequent date or time, including the execution of a written order, the filing or docketing of a written order, or the posting of a bond.

- (35) Timeshare interest. – An interest having a duration of more than three years which grants its holder the right to use and occupy an accommodation, facility, or recreational site, whether improved or not, for a specific period less than a full year during any given year.
- (36) Utility. – A person providing any service regulated by the North Carolina Utilities Commission.
- (37) Voidable transaction. – A transfer of an interest in property that is voidable under Article 3A of Chapter 39 of the General Statutes."

Explanation:

At the request of the Bankruptcy Section, this amendment adds a reference to G.S. 131E-91(d)(5) to a non-exclusive list of references in subdivision (27). This amendment also cleans up language and updates a reference in subdivision (5). Section 2(e) of S.L. 2020-23 recodified G.S. 46-3.1 as G.S. 46A-28, effective October 1, 2020.

Background Information:

§ 131E-91. Fair billing and collections practices for hospitals and ambulatory surgical facilities.

(a) All hospitals and ambulatory surgical facilities licensed pursuant to this Chapter shall, upon request of the patient, present an itemized list of charges to all discharged patients detailing in language comprehensible to an ordinary layperson the specific nature of the charges or expenses incurred by the patient. Patient bills that are not itemized shall include notification to the patient of the right to request, free of charge, an itemized bill. A patient may request an itemized list of charges at any time within three years after the date of discharge or so long as the hospital or ambulatory surgical facility, a collections agency, or another assignee of the hospital or ambulatory surgical facility asserts the patient has an obligation to pay the bill. Each hospital and ambulatory surgical facility shall establish a method for patients to inquire about or dispute a bill.

(b) If a patient has overpaid the amount due to the hospital or ambulatory surgical facility, whether as the result of insurance coverage, patient error, health care facility billing error, or other cause, and the overpayment is not in dispute or on appeal, the hospital or ambulatory surgical facility shall provide the patient with a refund within 45 days of receiving notice of the overpayment.

(c) A hospital or ambulatory surgical facility shall not bill insured patients for charges that would have been covered by their insurance had the hospital or ambulatory surgical facility submitted the claim or other information required to process the claim within the allotted time requirements of the insurer.

(d) Hospitals and ambulatory surgical facilities shall abide by the following reasonable collections practices:

- (1) A hospital or ambulatory surgical facility shall not refer a patient's unpaid bill to a collections agency, entity, or other assignee during the pendency of a patient's application for charity care or financial assistance under the hospital's or ambulatory surgical facility's charity care or financial assistance policies.

- (2) A hospital or ambulatory surgical facility shall provide a patient with a written notice that the patient's bill will be subject to collections activity at least 30 days prior to the referral being made.
 - (3) A hospital or ambulatory surgical facility that contracts with a collections agency, entity, or other assignee shall require the collections agency, entity, or other assignee to inform the patient of the hospital's or ambulatory surgical facility's charity care and financial assistance policies when engaging in collections activity.
 - (4) A hospital or ambulatory surgical facility shall require a collections agency, entity, or other assignee to obtain the written consent of the hospital or ambulatory surgical facility prior to the collections agency, entity, or other assignee filing a lawsuit to collect the debt.
 - (5) For debts arising from the provision of care by a hospital or ambulatory surgical center, the doctrine of necessities as it existed at common law shall apply equally to both spouses, except where they are permanently living separate and apart, but shall in no event create any liability between the spouses as to each other. No lien arising out of a judgment for a debt owed a hospital or ambulatory surgical facility under this section shall attach to the judgment debtors' principal residence, or, if the land upon which the principal residence is located is greater than five acres, then no lien shall attach to the judgment debtors' principal residence and the surrounding five acres, held by them as tenants by the entirety or that was held by them as tenants by the entirety prior to the death of either spouse where the tenancy terminated as a result of the death of either spouse.
 - (6) For debts arising from the provision of care by a hospital or ambulatory surgical center to a minor, there shall be no execution on or otherwise forced sale of the principal residence of the custodial parent or parents for a judgment obtained for the outstanding debt until such time as the minor is either no longer residing with the custodial parent or parents or until the minor reaches the age of majority, whichever occurs first.
- (e) The Commission shall adopt rules to ensure that this section is properly implemented. The Department shall not issue or renew a license under this Article unless the applicant has demonstrated that the requirements of this subsection are being met. (1991, c. 310, s. 1; 2013-382, s. 13.1; 2013-393, s. 2.)

Amendment #3:

SECTION #. G.S. 1-507.24 reads as rewritten:

"§ 1-507.24. Appointment of receivers; receivership not a trust.

(a) Action in Which Receivers Appointed. – A receiver may be appointed under this Article by the filing of a civil action by a creditor or other party in interest in which the sole relief requested is the appointment of a receiver or is combined with, or is ancillary to, a civil action that seeks a money judgment or other relief, or in the case of a limited receivership, is part of a power of sale or judicial foreclosure proceeding. However, in the case of an individual business debtor, a creditor to whom only consumer debt is owing ~~may~~ shall not file a civil action or motion to appoint a receiver for the individual business debtor. If the debtor files the complaint commencing

a civil action in which the sole relief requested is the appointment of a receiver, then no summons under Rule 4 of the North Carolina Civil Rules of Procedure shall be necessary and the title of the action required by Rule 10 of the North Carolina Civil Rules of Procedure shall be:

"In re: _____ [name of debtor]".

(b) Appointment by Judge. – Either a judge of the Superior Court Division or the District Court Division may appoint a receiver for a debtor that is an individual business debtor. Only a judge of the Superior Court Division may appoint a receiver for an entity. Once a receiver is appointed, the following provisions apply:

- (1) If a receiver is appointed for an individual business debtor or if a limited receiver is appointed for an entity, the clerk shall provide a copy of the order appointing the receiver to the senior resident superior court judge or the ~~senior~~ chief district court judge for the court in which the receivership is pending. If the receivership is pending in the Superior Court Division, the senior resident superior court judge for the court in which the receivership is pending shall designate either one of the resident judges for the court in which the receivership is pending, or one of the nonresident judges of the Superior Court Division then assigned to the district in which the receivership is pending, to be the presiding judge over the receiver and the receivership. The presiding judge shall retain jurisdiction and supervision of the receiver and the receivership until the receivership is terminated and the receiver discharged pursuant to G.S. 1-507.37, or until the senior resident superior court judge enters an order transferring jurisdiction and supervision of the receiver to another superior court judge. The judge of the Superior Court Division so designated shall retain jurisdiction and supervision notwithstanding the judge's rotation out of the district. If the receivership is pending in the District Court Division, the chief district court judge for the court in which the receivership is pending shall designate one of the judges of the District Court Division to retain jurisdiction and supervision of the receiver and the receivership until the receivership is terminated and the receiver is discharged pursuant to G.S. 1-507.37, or until the chief district court judge enters an order transferring jurisdiction and supervision of the receiver to another district court judge.
- (2) If a general receiver is appointed for an entity, the senior resident superior court judge shall promptly provide a copy of the order appointing the general receiver to the Chief Justice through the Administrative Office of the Courts and include special areas of expertise needed by the judge to be assigned and may include a list of recommended judges. The Chief Justice shall designate the receivership as an exceptional civil case pursuant to Rule 2.1 of the General Rules of Practice for the Superior and District Courts unless the case is designated as a mandatory complex business case under G.S. 7A-45.4(b)(4). The judge of the Superior Court Division who appoints the general receiver shall retain jurisdiction and supervision of the receivership until the Chief Justice assigns the case to a judge pursuant to Rule 2.1 of the General Rules of Practice for the Superior and District Courts.

→ This subsection ~~shall~~ does not apply to the appointment of a receiver in a pending action to partition real property pursuant to G.S. 46A-28.

(c) Appointment Before Judgment. – A limited receiver may be appointed before judgment to protect a party that demonstrates an apparent right, title, or interest in property that is the subject of the action, if the property or its rents and profits is being subjected to or is in danger of waste, loss, dissipation, or impairment, or has been or is about to be the subject of a voidable transaction.

(d) Appointment After Judgment. – A limited or general receiver may be appointed after judgment to carry the judgment into effect, or to dispose of property according to the judgment, or to preserve the property pending an appeal, or when an execution has been returned unsatisfied and the debtor refuses to apply the property in satisfaction of the judgment.

(e) Receiver for Entities and Individual Business Debtors. – In addition to those situations specifically provided for by law, a limited or general receiver may be appointed when an entity or an individual business debtor meets any of the following criteria:

- (1) The person is insolvent.
- (2) The person is not paying its debts as they become due unless such debts are the subject of a bona fide dispute.
- (3) The person is unable to pay its debts as they become due.
- (4) The person is in imminent danger of insolvency.
- (5) The person suspends its business for want of funds.
- (6) The person has forfeited or has suspended its legal existence.
- (7) The person had its legal existence expire by limitation.
- (8) The person is the subject of an action to dissolve ~~such~~ the person.

A limited receiver may also be appointed, in like cases, of the property located within this State of foreign persons.

(f) Foreclosure or Enforcement of Security Agreement. – In connection with a power of sale or judicial foreclosure proceeding or other enforcement of a security agreement, the court may appoint a limited receiver in any of the following circumstances:

- (1) The appointment is necessary to protect the property from waste, loss, spoilage, transfer, concealment, dissipation, or impairment.
- (2) The debtor agreed in a signed record to the appointment of a receiver on default.
- (3) The debtor agreed, after default and in a signed record, to the appointment of a receiver.
- (4) The property and any other collateral held by the secured party are not sufficient to satisfy the secured obligation.
- (5) The debtor fails to turn over to the secured party the collateral or proceeds of collateral, including rents, the secured party was entitled to collect.
- (6) The holder of a subordinate lien obtains the appointment of a receiver for the same collateral held by the secured party.

(g) Other Cases. – A receiver may be appointed in other cases as provided by law and equity.

(h) Motion for Appointment of Receiver. – The court may appoint a receiver in an action described in subsection (a) of this section with 10 days' notice to the debtor, all other parties to the action, any judgment creditor who is seeking the appointment of a receiver in any other action, and other parties in interest and other persons as the court may require. The court may appoint a receiver ex parte or on shortened notice on a temporary basis, pending further order of the court, if it is clearly shown that an emergency exists requiring the immediate appointment of a receiver and that a receiver is needed to avoid irreparable harm. In that event, the court shall set a hearing

as soon as practicable and at the subsequent hearing, the burden of proof shall be as would be applicable to a motion made on notice that is not expedited.

(i) Description of Receivership Property. – The order appointing the receiver or subsequent order shall describe the receivership property with particularity appropriate to the circumstances. If the order does not so describe the receivership property, until further order of the court, the receiver shall have control over all of the debtor's nonexempt property.

(j) Receivership Not a Trust. – The order appointing the receiver does not create a trust.

(k) Bad Faith Filing. – If the court denies a motion to appoint a receiver for an individual business debtor other than on consent of the party or parties seeking the appointment of the receiver and the debtor, and if the debtor does not waive the right to judgment under this subsection, the court may grant judgment against the party or parties seeking the appointment of the receiver for any damages proximately caused by ~~such the~~ filing, including costs and reasonable attorneys' fees, and punitive damages, if the court determines, after notice and hearing, that the motion was filed in bad faith."

Explanation:

At the request of the Bankruptcy Section, this amendment replaces "senior district judge" with "chief district court judge" in subdivision (b)(1) to conform to the rest of the section. This amendment also makes other clean-up changes.

Amendment #4:

SECTION #. G.S. 1-507.30 reads as rewritten:

"§ 1-507.30. Duties of debtor.

(a) Duties. – In addition to those duties conferred by statute or order of the court, the debtor ~~shall have~~ has the following duties:

(1) To assist and cooperate fully with the receiver in the administration of the receivership and the receivership property and the discharge of the receiver's ~~duties, duties~~ and to comply with all rules and orders of the court.

★ (2) To deliver to the receiver, immediately upon the receiver's ~~appointment,~~ appointment and demand, all of the receivership property in the debtor's possession, custody, or control, including all books and records, electronic data, passwords, access codes, statements of accounts, deeds, titles or other evidence of ownership, financial statements, financial and lien information, bank account statements, and all other papers and documents related to the receivership property.

(3) To supply to the receiver information as requested relating to the administration of the receivership and the receivership property, including information necessary to complete any reports or other documents that the receiver may be required to file.

(4) To remain responsible for the filing of all tax returns, including those returns applicable to periods which include those in which the receivership is in effect, except as otherwise ordered by the court.

(b) Debtor Not Individual. – If the debtor is not an individual, this section applies to each officer, director, manager, member, partner, trustee, or other person exercising or having the power

to exercise control over the affairs of the debtor immediately before the appointment of the receiver.

→ (c) Enforcement. – If a person knowingly fails to perform a duty imposed by this section, the court may (i) compel the person to comply with that duty, (ii) award the receiver actual damages caused by the person's ~~failure~~, failure and reasonable attorneys' fees and costs, and (iii) sanction the person for civil contempt."

Explanation:

At the request of the Bankruptcy Section, this amendment adds the phrase "and demand" to subdivision (2). This amendment also makes clean-up changes.

Amendment #5:

SECTION #. G.S. 1-507.40 reads as rewritten:

"§ 1-507.40. Turnover of receivership property.

(a) Demand by Receiver. – Except as expressly provided in this section, and unless otherwise ordered by the court, upon demand by a receiver: (i) subject to subsection (b) of this section, any person shall turn over to the receiver any receivership property that is within the possession, custody, or control of that person and (ii) any person that owes a debt that is receivership property and is matured or payable on demand or on order shall pay the debt to or on the order of the receiver, except to the extent that the debt is subject to setoff or recoupment.

(b) Adequate Protection. – If a creditor has possession, custody, or control of receivership property and the validity, perfection, or priority of the creditor's lien on or interest in the property depends on the creditor's possession, custody, or control, the creditor may retain possession, custody, or control until the court orders adequate protection of the creditor's lien.

→ (c) Turnover Motion by Receiver. – A receiver may seek to compel turnover of receivership property required by ~~subdivision clause~~ (i) of subsection (a) of this section by motion in the receivership. If there exists a bona fide dispute with respect to the existence or nature of the receiver's or the debtor's interest in the receivership property, turnover shall be sought by means of an action under G.S. 1-507.38. Unless a bona fide dispute exists about a receiver's right to possession, custody, or control of receivership property, the court may sanction as civil contempt a person's failure to turn over the property when required by this section.

→ (d) Payment Only to Receiver. – A person that has notice of the appointment of a receiver and owes a debt that is receivership property ~~may~~ shall not satisfy the debt by payment to the debtor."

Explanation:

This amendment corrects the format of a citation and makes another clean-up change.

Amendment #6:

SECTION #. G.S. 1-507.42 reads as rewritten:

"§ 1-507.42. Stays.

(a) Control of Property. – All receivership property shall be under the control and supervision of the court appointing the receiver.

(b) Stay by Court Order. – In addition to any stay provided in this section, the court may order a stay or stays to protect receivership property and to facilitate the administration of the receivership.

(c) Automatic Stay. – Except as otherwise set forth in subsection (f) of this section or ordered by the court, the entry of an order appointing a receiver shall operate as a stay, applicable to all persons, of an act, action, or proceeding: (i) to obtain possession of receivership property, or to interfere with or exercise control over receivership property, or enforce a judgment against receivership property, other than the commencement or continuation of a judicial, administrative, or other action or proceeding, including the issuance or use of process, to enforce any lien having priority over the rights of the receiver in receivership property and (ii) any act to create or perfect any lien against receivership property, except by exercise of a right of setoff, to the extent that the lien secures a claim that arose before the time of appointment.

(d) Limited Additional Automatic Stay in General Receiverships. – Except as otherwise ordered by the court, in addition to the stay provided in subsection (c) of this section, the entry of an order appointing a general receiver shall operate as a stay, applicable to all persons, of: (i) the commencement or continuation of a judicial, administrative, or other action or proceeding, including the issuance or use of process, against the debtor or the receiver that was or could have been commenced before the time of appointment, or to recover a claim against the debtor that arose before the time of appointment and (ii) the commencement or continuation of a judicial, administrative, or other action or proceeding, including the issuance or use of process, to enforce any lien having priority over the rights of the receiver in receivership property.

Stays obtained for the acts specified in this subsection shall expire 60 days after the time of appointment unless, before the expiration of the 60-day period, the receiver or other party in interest files a motion seeking an order of the court extending the stay and before the expiration of an additional 30 days following the 60-day period, the court orders the stay extended.

(e) Modification of Stay. – The court may modify for cause any stay provided in this section upon the motion of any party in interest affected by the stay.

(f) Inapplicability of Stay. – The entry of an order appointing a receiver does not operate as a stay of any of the following:

- (1) The commencement or continuation of a criminal proceeding against the debtor.
- (2) The commencement or continuation of an action or proceeding by a governmental unit to enforce its police or regulatory power.
- (3) The enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce its police or regulatory power, or with respect to any licensure of the debtor.
- (4) The establishment by a governmental unit of any tax liability and any appeal thereof.
- (5) The commencement or continuation of an action or proceeding to establish paternity, to establish or modify an order for alimony, maintenance, or support, or to collect alimony, maintenance, or support under any order of a court.
- (6) The exercise of a right of setoff.
- (7) Any act to maintain or continue the perfection of a lien on, or otherwise preserve or protect rights in, receivership property, but only to the extent that the act was

necessary to continue the perfection of the lien or to preserve or protect the lien or other rights as they existed as of the time of the appointment. If the act would require seizure of receivership property or commencement of an action prohibited by a stay, the continued perfection shall instead be accomplished by filing a notice in the court before which the receivership is pending and by serving the notice upon the receiver and receiver's attorney, if any, within the time fixed by law for seizure or commencement of the action.

- (8) The commencement of a bankruptcy case under federal bankruptcy laws.
- ★ (9) Any other exception as provided in United States Code, Title 11, § ~~326(b)~~, 362(b), as to the automatic stay in federal bankruptcy cases in effect from time to time.

(g) Action Voidable. – The court may void an act that violates a stay under this section.

→ (h) Enforcement. – If a person knowingly violates a stay under this section, the court may award actual damages caused by the violation, reasonable attorneys' fees, and ~~costs~~, costs and may sanction the violation as civil contempt."

Explanation:

At the request of the Bankruptcy Section, this amendment corrects a reference to the Bankruptcy Code in subdivision (f)(9). 11 U.S.C. § 326 concerns the compensation of a bankruptcy trustee, whereas 11 U.S.C. § 362 concerns an automatic stay during a bankruptcy proceeding. This amendment also makes another clean-up change.

Amendment #7:

SECTION #. G.S. 46A-28 reads as rewritten:

"§ 46A-28. Court's authority to make orders before final determination of proceeding; notice and hearing.

★ (a) Before final determination of a proceeding to partition real property, on application of any of the parties, the court may make any orders that it finds to be in the best interest of the parties, including, but not limited to, orders relating to possession, payment of secured debt or other liens on the property, occupancy and payment of rents, the appointment of a receiver pursuant to G.S. 1-502(6) or a limited receiver for the real property pursuant to Article 38A of Chapter 1 of the General Statutes, and access to the property for the purpose of inspecting, surveying, appraising, or selling the property.

(b) A party making a written application under subsection (a) of this section shall serve a copy of the application on all other parties and any other person the court may require. The court shall schedule a hearing on the application, if, within 10 days of being served, a person files a response in opposition to the application or requests a hearing. If no person files a response or requests a hearing within 10 days of being served, the court may decide the application without a hearing."

Explanation:

At the request of the Bankruptcy Section, this amendment amends G.S. 46A-28 to add back a reference to G.S. 1-502(6) that was deleted by Section 3(e) of S.L. 2020-75. S.L. 2020-75,

however, did not amend or repeal G.S. 1-502, which contains a reference to G.S. 46A-28. G.S. 1-502 is set out at the beginning of this document.

Background Information:

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019**

**SESSION LAW 2020-75
SENATE BILL 364**

AN ACT TO ENACT THE NORTH CAROLINA COMMERCIAL RECEIVERSHIP ACT; REPEAL CORRESPONDING ASSIGNMENTS FOR THE BENEFIT OF CREDITOR STATUTES; AND MAKE AN ACTION FOR THE APPOINTMENT OF A GENERAL RECEIVER FOR CERTAIN BUSINESS ENTITY DEBTORS A MANDATORY COMPLEX BUSINESS CASE, AS RECOMMENDED BY THE NORTH CAROLINA BAR ASSOCIATION.

The General Assembly of North Carolina enacts:

...

SECTION 3.(e) G.S. 46A-28 reads as rewritten:

"§ 46A-28. Court's authority to make orders before final determination of proceeding; notice and hearing.

(a) Before final determination of a proceeding to partition real property, on application of any of the parties, the court may make any orders that it finds to be in the best interest of the parties, including, but not limited to, orders relating to possession, payment of secured debt or other liens on the property, occupancy and payment of rents, the appointment of ~~receivers pursuant to G.S. 1-502(6)~~, a limited receiver for the real property pursuant to Article 38A of Chapter 1 of the General Statutes, and access to the property for the purpose of inspecting, surveying, appraising, or selling the property.

...."

SECTION 4. This act becomes effective January 1, 2021, and applies to receiverships commenced on or after that date.

In the General Assembly read three times and ratified this the 25th day of June, 2020.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper

Governor

Approved 5:30 p.m. this 1st day of July, 2020